No. 126, Original

In The

Supreme Court of the United States

October Term, 1998

STATE OF KANSAS,

Plaintiff,

v.

STATE OF NEBRASKA,

and STATE OF COLORADO.

Motion For Leave To File Bill Of Complaint

NEBRASKA'S REPLY TO BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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ARGUMENT

The United States recommends that this Court grant the motion of the State of Kansas for leave to file its Bill of Complaint. In making this recommendation, the United States fails to address the decisive point that Kansas does not plead any facts which establish that its rights have been violated or that it has been injured by the State of Nebraska.

The key question before the Court at this time is whether it should grant original jurisdiction where the plaintiff fails to allege any specific facts in support of its position and the named defendant cites specific government data showing that no substantial violation of the Compact has occurred.

The State of Kansas pleads no facts, only general conclusions of unspecified amounts of overuse by the State of Nebraska. *See* Kansas Complaint ¶ 7 On the other hand, the State of Nebraska, through an affidavit and charts based upon official Republican River Compact data, adopted unanimously by the States of Kansas, Nebraska and Colorado each and every year from 1959 through 1994, clearly establishes that Kansas has received its allocations each and every year except one. Significantly, the United States does not dispute that the State of Nebraska has accurately presented the official Republican River Compact data. Instead, the United States recommends that the Court disregard this data as not being relevant. *See* Brief of United States, pp. 12-15.

The United States misses the point. The point is that the State of Nebraska should not be forced to expend millions of dollars defending a lawsuit in the Supreme Court of the United States when the State of Kansas

pleads no specific facts establishing Compact violatio and the official Compact data unanimously adopted b the Compact Commission for 35 years show that n serious violation of the Compact has occurred.

CONCLUSION

The State of Nebraska renews its request that th Court not grant original jurisdiction at this time base upon the Bill of Complaint presented to it. If Kansas ha specific facts to establish violations by Nebraska, it ca easily file a new motion and Bill of Complaint for th Court's consideration. If it does not have such facts, the in fairness to its sister states, the State of Kansas shoul be required to develop those facts before litigation i commenced in this Court.

Respectfully submitted,

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